IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID MOODY and CAROL FOSTER-MOODY	:	**CIVIL ACTION**
v.	:	
WINFIELD HUNSBERGER, INC. t/a HEACOCK LUMBER	:	**NO. 95-6242**

MEMORANDUM ORDER

Mr. Moody was injured while walking along a driveway on defendant's premises by a plank of wood which struck him when it was hit by a forklift transporting lumber up the driveway. Plaintiffs alleged that Mr. Moody's knee was injured as a proximate result of the negligence of defendant and its forklift driver. The jury returned a verdict in favor of plaintiffs but found that Mr. Moody was 25% contributorily negligent. The jury awarded $116,000 to Mr. Moody and $5,500 to Mrs. Moody on her consortium claim.

Presently before the court is plaintiffs' Motion for a New Trial. Plaintiffs contend that the jury verdict was inadequate, unsupported by the evidence and "shocking and outrageous." Plaintiffs also contend that the court erred in declining to charge the jury about the effect of a plaintiff's receipt of workers compensation benefits, that they could draw an adverse inference from defendant's failure to call as a witness a physician who examined Mr. Moody for defendant during discovery and that as a matter of law Mr. Moody was not contributorily negligent.

A court should grant a new trial on the ground that the verdict was against the weight of the evidence only where the verdict as rendered results in a miscarriage of justice or shocks the conscience. Santi v. CNA Insurance Companies, 88 F.3d 192, 201 (3d Cir. 1996); Williamson v. Consolidated Rail Corp., 926 F.2d 1344, 1352-53 (3d Cir. 1991); Johnson v. Goldstein, 864 F. Supp. 490, 492 (E.D. Pa. 1994). A court should be particularly reluctant to substitute its judgment for that of a jury on matters that do not involve complex factual determinations but rather subjects well within the understanding of a layperson. Klein v. Hollings, 992 F.2d 1285, 1290 (3d Cir. 1993).

A new trial on the ground of inadequate damages is appropriate only when a jury awards an amount "substantially less than was unquestionably proven" with "uncontroverted and undisputed evidence." Semper v. Santos, 845 F.2d 1233, 1236 (3d Cir. 1988). Moreover, a jury may rationally reject part of all of even uncontradicted testimony which it finds unconvincing. Id. at 1237.

In determining whether to grant a new trial based on the refusal of a requested point for charge, the court determines whether the charge viewed as a whole in light of all of the evidence fairly and adequately submitted the pertinent issues to the jury. Cooper Distributing Co. v. Amana Refrigeration, Inc., 63 F.3d 262, 275 (3d Cir. 1995); Levinson v. Prentice-Hall, Inc., 868 F.2d 558, 564 (3d Cir. 1989); Link v. Mercedes-Benz of North America, 788 F.2d 918, 921-22 (3d Cir. 1986).

Plaintiffs contend that because there was uncontradicted testimony that Mr. Moody's lost earnings totaled at least $75,000 and that he incurred reasonable medical expenses of $58,327, a verdict of $116,000 is shockingly inadequate. To the contrary, there was evidence from which the jury reasonably could have concluded that some or much of Mr. Moody's losses resulted from preexisting or aggravating subsequent knee injuries, or both, for which defendant was not responsible.[1] A year prior to the accident, Mr. Moody fell in a hole and pulled a hamstring. Several months after the lumber yard accident, Mr. Moody "popped" his knee while attempting to move a heavy manhole cover.[2]

The only pertinent point is not, as plaintiffs suggest, whether Mr. Moody sustained a "new injury." If he exacerbated his condition or triggered debilitating symptoms by engaging in inappropriate activity, a jury could reasonably find the defendant not to be responsible for losses caused thereby. A plaintiff who injures a knee in an accident caused by a defendant cannot look to that defendant for the portion of damages

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[1] While defendant did not contest the amount of Mr. Moody's lost earnings or the reasonableness of his medical bills for the care required, defendant did not concede that these damages were all proximately caused by the accident at its premises.

[2] Mr. Moody worked sporadically between the accident and trial. He claimed that because of the accident he lost 28 months of work at $30,000 per year plus additional sums over two intervening periods when he worked less than 40 hour weeks. The total of wages allegedly lost because of the accident was approximately $75,000. There was no claim for future losses.

resulting from the plaintiff's decision to play in a soccer match or to attempt to lift a very heavy object.

The court properly declined to charge the jury regarding receipt of insurance or workers compensation benefits. Plaintiffs are correct in their suggestion that evidence of the receipt of such benefits may be prejudicial. This is why the court concluded that to inject a discussion about the receipt of collateral benefits into the charge on the record presented would be needlessly detrimental to plaintiffs.[3] There was no evidence in the case of the payment of insurance or workers compensation benefits. To instruct a jury not to consider collateral payments of which they received no evidence would unnecessarily cause confusion and risk inviting a discussion of insurance during deliberations.

The only utterance of the words workers compensation was a fleeting reference in a question to a vocational expert asked by plaintiffs' counsel in videotaped testimony. Plaintiffs' counsel asked if Mr. Moody's employer or its workers compensation carrier had engaged someone to attempt to get him back to work as soon as possible. The response was "no" and that the person to whom counsel referred was responsible for coordinating health care. Nevertheless, counsel asked the court to tell the jurors that "Mr. Moody has been collecting workers

[3] Telling a jury that a plaintiff has received insurance payments raises the specter of a double recovery and suggests a possible motive to malinger.

compensation benefits," and to "disregard that fact during your deliberations."[4]

The jurors were instructed that they must decide the case based solely on the evidence presented and that statements or questions by counsel were not evidence. Also, of course, if counsel really thought his reference to a workers compensation carrier was detrimental to his clients, he easily could have deleted these words from the videotape before playing it to the jury.

Counsel's position is quite remarkable. He effectively suggests that he should be able to secure a point for charge on a matter ordinarily inappropriate by needlessly injecting an oblique reference to that matter in a question and then, knowing it elicited an unhelpful answer, failing to delete it from a videotape. A court in a civil case is not obliged to protect a party from something purportedly prejudicial said or done by that party's lawyer. Moreover, the court was and remains convinced that, particularly given the context, the exchange in question between counsel and the witness did not in any way affect the

[4] Plaintiffs state that defendant "joined" in this request. This is not so. Defense counsel carefully and gleefully stated that he did "not object" to the court reading this language to the jury. Presumably defense counsel also would have no objection to the court accepting an invitation from a plaintiff's lawyer to tell a jury to disregard a prior similar injury or condition of plaintiff of which there had been no proof. The court, of course, does not suggest that were a defendant or witness gratuitously to state that a plaintiff received insurance compensation for his claimed loss that a charge on the collateral source rule would be inappropriate.

verdict of the jury. Defense counsel made absolutely no reference to insurance or workers compensation in presenting his case or argument to the jury.[5]

The court properly declined to give an adverse inference charge regarding defendant's decision not to call Dr. Schmidt as a witness. That defendant ultimately chose to rely on the testimony of Mr. Moody's own physicians in framing the defense does not mean that Dr. Schmidt's testimony would have been adverse to the defense. More importantly, that Dr. Schmidt was asked by defendant to examine Mr. Moody hardly placed him under the exclusive control of the defendant. Plaintiffs had his report and could have subpoenaed him to testify in their case at trial if they really believed his testimony would have helped them.

The court properly declined to charge the jury that as a matter of law Mr. Moody was not contributorily negligent. There was ample evidence from which the jury quite reasonably could have found that Mr. Moody was contributorily negligent, including evidence that he failed to move to an admittedly safe location which he easily could have done and that he even gestured to the forklift driver that it was okay to proceed.

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[5] There is a practical temptation to give a point for charge proffered, however questionably, by the only party who might logically object to it. Nevertheless, a court should strive to submit any case to a jury in a manner which is reasonable in view of the record and fair to all of the parties.

The issues in the case were fairly and adequately submitted to the jury. Matters involving negligence, contributory negligence and proximate causation are not complex. They were as basic as it gets and well within the understanding of a layperson. The verdict was not remotely "shocking" or "outrageous." The verdict was consistent with those frequently returned in comparable cases in the district court. The verdict was an entirely reasonable one and amply supported by the evidence.

ACCORDINGLY, this day of March, 1998, **IT IS HEREBY ORDERED** that said plaintiffs' Motion for a New Trial is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.